INDEX

ACCOUNTS.

See ESTATES OF DECEDENTS;
EXECUTORS AND ADMINISTRATORS.

ACTION.

See BONDS;
CONSTITUTIONAL LAW, 14;
CONTRACTS, 2;
COURTS;
EQUITY;
INSURANCE, 1;
JURISDICTION, A 5; B; C; D 2;
PATENT FOR INVENTION, 2;
PUBLIC LANDS;
STATUTES, A 4.

ACTS OF CONGRESS.

ADULTERATED FOOD, Act of August 30, 1890, 26 Stat. 414 (see Statutes, A 7): *Crossman* v. *Lurman*, 189.

APPEALS from Court of Appeals of the District of Columbia, Act of February 9, 1893 (see Jurisdiction, A 1, 4, 6): *Steinmetz* v. *Allen*, 543.

CIRCUIT COURT OF APPEALS ACT of 1891 (see Jurisdiction, A 2): *Royal Insurance Co.* v. *Martin*, 150.

DISTRICT OF COLUMBIA CODE, Sec. 233 (see Jurisdiction, A 1): *Sinclair* v. *District of Columbia*, 16.

DISTRICT OF COLUMBIA, Act establishing Court of Appeals: *Ib.*

IMMIGRATION Act of March 3, 1891, 26 Stat. 1084 (see Porto Rico): *Gonzales* v. *Williams*, 1.

IMPORTATION of impure tea, Act of March 2, 1897, 29 Stat. 604 (see Constitutional Law, 8): *Buttfield* v. *Stranahan*, 470.

INTERNAL REVENUE, Rev. Stat. subd. 4, sec. 629 (see Jurisdiction, 2): *Spreckels Sugar Refining Co.* v. *McClain*, 397.

INTERSTATE COMMERCE, Act of February 4, 1887, chap. 104, sec. 3, 24 Stat. 379 (see Interstate Commerce, 2): *Central Stock Yards* v. *Louisville &c. Ry. Co.*, 568.

JUDICIARY ACT of 1887–1888 (see Jurisdiction, C): *Spreckels Sugar Refining Co.* v. *McClain*, 397.

JUDICIARY ACT of 1891 (see Statutes, A 4): *Ib:* (see Jurisdiction, A 2): *Ib.*

KENTUCKY STATEHOOD, Act of February 4, 1791, chap. 4, 1 Stat. 189 (see Constitutional Law, 12): *Wedding* v. *Meyler*, 573.

NATIONAL BANKS (see National Banks): *Commercial National Bank* v. *Weinhard*, 243.

PATENT OFFICE, Rev. Stat. sec. 483 (see Jurisdiction, A 6): *Steinmetz* v. *Allen*, 543.

PATENT FOR INVENTION, Rev. Stat. sec. 4886 (see Patent for Invention): *Ib.*

PUBLIC LANDS, Act of March 3, 1807, sec. 4, amending Act of March 2, 1802 (see Public Lands, 2): *Joplin* v. *Chachere*, 94.
PUBLIC LANDS, Act of April 29, 1816: *Ib.*
PUBLIC LANDS, Act of March 3, 1875, 18 Stat. 482 (see Public Lands): *United States* v. *St. Anthony R. R. Co.*, 524.
PUBLIC LANDS, Act of March 2, 1889, 25 Stat. 850 (see Estoppel): *United States* v. *California & Ore. Land Co.*, 355.
TARIFF ACT of 1897, par. 649 (see Statutes, A 10): *Benziger* v. *United States*, 38.
TAXATION, Act of June 6, 1896, 29 Stat. 253 (see Constitutional Law, 9): *Cornell* v. *Coyne*, 418.
WAR REVENUE ACT of 1898, 30 Stat. 448 (see Statutes, A 4, 5): *Spreckels Sugar Refining Co.* v. *McClain*, 397; *Chesebrough* v. *United States*, 253; (see Constitutional Law, 18): *Thomas* v. *United States*, 363.

ADMINISTRATION.

See ESTATES OF DECEDENTS, 1, 2;
EXECUTORS AND ADMINISTRATORS.

ADULTERATED FOOD.

See CONSTITUTIONAL LAW, 2, 3;
CONTRACTS, 3;
STATUTES, A 7.

ADVERSE POSSESSION.

See PUBLIC LANDS, 2.

ALIENS.

See PORTO RICO.

APPEAL AND WRIT OF ERROR.

Writ directed to court where record remains.

The writ of error runs to a lower court when the record remains there, and the judgment has to be entered there after a decision of the question of law involved by the highest court of the State. *Wedding* v. *Meyler*, 573.

See CONSTITUTIONAL LAW, 12; JURISDICTION; PATENT FOR INVENTION, 1; PRACTICE, 2.

ATTORNEYS.

See ESTATES OF DECEDENTS, 1;
EQUITY.

BANKS.

See BANKRUPTCY; CORPORATIONS, 2; NATIONAL BANKS; TAXATION, 1.

BANKRUPTCY.

Debt due bankrupt—Bank balance as set-off against notes held by bank.

The balance of a regular bank account at the time of filing the petition is

a debt due to the bankrupt from the bank, and in the absence of fraud or collusion between the bank and the bankrupt with the view of creating a preferential transfer, the bank need not surrender such balance, but may set it off against notes of the bankrupt held by it and prove its claim for the amount remaining due on the notes (*Pirie* v. *Chicago Title & Trust Co.*, 182 U. S. 438, distinguished). *New York County Bank* v. *Massey*, 138.

BONDS.

Of State, secured by stock for which issued—Delivery of bonds in payment of stock—Action to foreclose on stock securing bonds; necessary parties.

Where a statute provides that a State issue bonds at not less than par to pay for a subscription to stock of a railroad company; and, after advertising for bids in accordance with the statute and receiving none, the bonds are delivered to the railroad company in payment of the subscription, the transaction is equivalent to a cash sale to the company at par, and the State becomes the owner of the stock even though no formal certificates therefor are issued to it. Under the special provisions of the statute involved the endorsement on bonds that each bond for $1000 is secured by an equal amount of the par value of the stock subscribed for by the State is tantamount to a separation and identification of the number of shares mentioned and constitutes a separate and registered mortgage on that number of shares for each bond. A holder of a certain number of such bonds may foreclose on the specific number of shares securing his bonds and the holders of other bonds and of liens on the property of railroad company are not necessary parties to the foreclosure suit. *South Dakota* v. *North Carolina*, 286.

See JURISDICTION, A 5.

CABS.

See INTERSTATE COMMERCE, 1;
TAXATION, 4.

CARRIERS.

1. *Liability for damage from customs inspection accruing on line of connecting carrier where contract limits liability.*

Where a contract of shipment, from a point without to a point within the United States over the lines of several carriers, provides that each carrier shall be liable only for loss or damage accruing on its own lines the last carrier is not responsible for damages resulting from an examination by customs officers at a point not on its own line, and different from the point to which the contract provided that the goods should be delivered in bond. *Wabash R. R. Co.* v. *Pearce*, 179.

2. *Lien under laws of United States on goods in transit for import duties paid.*

A common carrier has, under the laws of the United States, a lien entitling it to possession until paid, on goods in transit over its lines for legal import duties paid thereon by it either directly to the Government or to a connecting carrier which has already paid the same. *Ib.*

3. *Pass—Acceptance of, by passenger, affecting liability for ordinary negligence.* When a railroad company gives gratuitously, and a passenger accepts, a pass, the former waives its rights as a common carrier to exact compensation; and, if the pass contains a condition to that effect, the latter assumes the risks of ordinary negligence of the company's employés; the arrangement is one which the parties may make and no public policy is violated thereby. And if the passenger is injured or killed while riding on such a pass gratuitously given, which he has accepted with knowledge of the conditions therein, the company is not liable therefor either to him or to his heirs, in the absence of wilful or wanton negligence. A railroad company is not under two measures of liability —one to the passenger and the other to his heirs. The latter claim under him and can recover only in case he could have recovered had he been injured only and not killed. *Northern Pacific Ry. Co.* v. *Adams*, 440.

See FEDERAL QUESTION, 1; RAILROADS; INTERSTATE COMMERCE, 1; TAXATION, 4.

CASES DISTINGUISHED.

Pine River Logging Co. v. *United States*, 186 U. S. 279, distinguished from *United States* v. *St. Anthony R. R. Co.*, 524.

Pirie v. *Chicago Title & Trust Co.*, 182 U. S. 438, distinguished from *New York County Bank* v. *Massey*, 138.

United States v. *Lynah*, 188 U. S. 445, distinguished from *Bedford* v. *United States*, 217.

Wooden Ware Co. v. *United States*, 106 U. S. 432, distinguished from *United States* v. *St. Anthony R. R. Co.*, 524.

CASES EXPLAINED.

Leisy v. *Hardin*, 135 U. S. 100, explained in *American Steel & Wire Co.* v. *Speed*, 500.

Lyng v. *Michigan*, 135 U. S. 161. *Ib.*

CASES FOLLOWED.

Andrews v. *Andrews*, 188 U. S. 14, followed in *German Savings Society* v. *Dormitzer*, 125.

Brown v. *Houston*, 114 U. S. 622, followed in *American Steel & Wire Co.* v. *Speed*, 500.

Buttfield v. *Stranahan*, 192 U. S. 470, followed in *Buttfield* v. *Bidwell*, 498, and *Buttfield* v. *United States*, 499.

Chapman v. *United States*, 164 U. S. 436, followed in *Sinclair* v. *District of Columbia*, 16.

Cronin v. *Adams*, 192 U. S. 108, followed in *Cronin* v. *City of Denver*, 115.

Field v. *Clark*, 143 U. S. 649, followed in *Buttfield* v. *Stranahan*, 470.

Gibson v. *United States*, 166 U. S. 269, followed in *Bedford* v. *United States*, 217.

Woodruff v. *Parham*, 8 Wall. 123, followed in *American Steel & Wire Co.*, v. *Speed*, 500.

"CASTS OF SCULPTURE."
See STATUTES, A 10.

CITIZENSHIP.
See JURISDICTION, C.
PORTO RICO.

CIVIL RIGHTS.
See CONSTITUTIONAL LAW, 7.

COLLATERAL ATTACK.
See CONSTITUTIONAL LAW, 10.

COMMERCE.
See CONGRESS, POWERS OF; INTERSTATE COMMERCE; CONSTITUTIONAL LAW, 2, 3; TAXATION, 4.

COMMON CARRIER.
See CARRIER.

CONFISCATION.
See CONSTITUTIONAL LAW, 16.

CONGRESS, ACTS OF.
See ACTS OF CONGRESS.

CONGRESS, POWERS OF.
To regulate foreign commerce inclusive of right to establish standards of food imports.
The power of Congress to regulate foreign commerce, being an enumerated power, is complete in itself, acknowledging no limitations other than those prescribed in the Constitution, and Congress can, without violating the due process clause, establish standards and provide from considerations of public policy that no right shall exist to import an article of food not equal thereto. No individual has a vested right to trade with foreign nations superior to the power of Congress to determine what, and upon what terms, articles may be imported into the United States. *Buttfield* v. *Stranahan*, 470.
See CONSTITUTIONAL LAW, 8.

CONSTITUTIONAL LAW.
1. *Commerce clause—Merchandise shipped from one State to another not "imports"—No constitutional prohibition against state taxation of.*
In a constitutional sense "imports" embrace only goods brought from a foreign country and do not include merchandise shipped from one State to another. The several States are not, therefore, controlled as to such merchandise by constitutional prohibitions against the taxation of imports, and goods brought from another State, and not from a foreign country, are subject to state taxation after reaching their destination

and whilst held in the State for sale. (*Woodruff* v. *Parham*, 8 Wall. 123; *Brown* v. *Houston*, 114 U. S. 622, have never been overruled directly or indirectly by *Leisy* v. *Hardin*, 135 U. S. 100; *Lyng* v. *Michigan*, 135 U. S. 161, or other cases resting on the rule expounded in those cases.) Goods brought in original packages from another State, after they have arrived at their destination and are at rest within the State, and are enjoying the protection which the laws of the State afford, may, without violating the commerce clause of the Constitution, be taxed without discrimination like other property within the State, although at the time they are stored at a distributing point from which they are subsequently to be delivered in the same packages, through the storage company to purchasers in various States. *American Steel & Wire Co.* v. *Speed*, 500.

2. *Commerce clause—New York pure food law not repugnant.*

Chapter 661, § 41, 1893, of the Laws of New York, prohibiting the sale of adulterated food and drugs is not repugnant to the commerce clause of the Federal Constitution but is a valid exercise of the police power of the State. *Crossman* v. *Lurman*, 189.

3. *Commerce clause—Power of State to control dealings in adulterated foods.*

The fact that a demand exists for articles of food so adulterated by fraud and deception as to come within the prohibitions of a state statute does not bring the right to deal therein under the commerce clause of the Constitution so that such dealings cannot be controlled by the State in the valid exercise of its police power. *Ib.*

4. *Contracts—Impairment—Reduction of water rates.*

The provision in the California Water Act of 1862 that county boards of supervisors should regulate water rates but could not reduce them below a certain point does not amount to a contract with water companies, which would be impaired within the meaning of the Federal Constitution by a subsequent act either reducing the rates below such point or authorizing boards of supervisors to do so. *Stanislaus County* v. *San Joaquin C. & I. Co.*, 201.

5. *Due process of law—Effect of conditions and prohibitions in municipal ordinance as to sale of liquor at retail.*

The right to sell liquor by retail depends upon the law of the State which may affix conditions in granting the right, and one who accepts a license under the state law, or a municipal ordinance authorized thereby, is not deprived of his property or liberty without due process of law, within the meaning of the Federal Constitution, by reason of conditions or prohibitions in the ordinance as to the sale of liquor in places where women are employed or permitted to enter. *Cronin* v. *Adams*, 108; *Cronin* v. *Denver*, 115.

6. *Due process—Equal protection of laws—State law making possession of policy slips by other than public officer presumption of possession knowingly unlawful.*

It is within the established power of a State to prescribe the evidence which

is to be received in its own courts. The provisions of sections 344*a*, and 344*b*, of the Penal Code of New York making the possession of policy slips by a person other than a public officer presumption of possession knowingly in violation of law are not violative of the Fourteenth Amendment, are not unconstitutional as depriving a citizen of his liberty or property without due process of law, and do not, on account of the exception as to public officers, deprive him of the equal protection of the laws. *Adams* v. *New York*, 585.

7. *Equal protection—Exclusion of negroes from jury.*

A motion to quash an indictment for murder was made on the ground that all colored men had been excluded from the grand jury solely because of their race and color, and because of a certain provision of the state constitution alleged to deny them the franchise in violation of the Fourteenth Amendment. These provisions were set out. The motion, about two octavo pages in length, was stricken from the files by the state court on the ground of prolixity, members of the grand jury not having to have the qualifications of electors. *Held*, on error, that the reference of the motion to the constitutional requirements concerning electors as one of the motives for the exclusion of the blacks did not warrant such action as would prevent the court from passing on constitutional rights which it was the object of the motion to assert, and that the exclusion of blacks from the grand jury as alleged was contrary to the Fourteenth Amendment of the Constitution of the United States. *Rogers* v. *Alabama*, 226.

8. *Executive and legislative powers—Statute vesting executive officers with legislative powers—Due process of law.*

Where a statute acts on a subject as far as practicable and only leaves to executive officials the duty of bringing about the result pointed out, and provided for it is not unconstitutional as vesting executive officers with legislative powers. (*Field* v. *Clark*, 143 U. S. 649.) The act of March 2, 1897, 29 Stat. 604, to prevent the importation of impure and unwholesome tea is not unconstitutional either because the power conferred to establish standards is legislative and cannot be delegated by Congress to administrative officers; because persons affected thereby have a vested interest to import teas which are in fact pure though below the standard fixed; because the establishment of and enforcement of the standard qualities constitutes a deprivation of property without due process of law; because it does not provide for notice and opportunity to be heard before the rejection of the tea; or, because the power to destroy goods upon the expiration of the time limit without a judicial proceeding is a condemnation and taking of property without due process of law. *Buttfield* v. *Stranahan*, 470.

9. *Exports—Taxation of articles manufactured for export.*

The prohibition in the Constitution against taxes or duties on exports attaches to exports as such and does not relieve articles manufactured for export from the prior ordinary burdens of taxation which rest upon all property similarly situated. The fact that a quantity of "filled cheese"

was manufactured expressly for export does not exempt it from the tax imposed by the act of June 6, 1896, 29 Stat. 253, and the reference in that act to the provisions of existing laws governing the engraving, issue, etc., of stamps relating to tobacco and snuff, and making them applicable to stamps used for taxes on filled cheese as far as possible, does not relate to stamps issued without cost for tobacco and snuff manufactured for export. *Cornell* v. *Coyne*, 418.

10. *Full faith and credit clause—Collateral attack of decree of divorce on ground of jurisdiction.*

A decree of divorce may be impeached collaterally in the courts of another State by proof that the court granting it had no jurisdiction, even when the record purports to show jurisdiction and appearance of other party, without violating the full faith and credit clause of the Federal Constitution. (*Andrews* v. *Andrews*, 188 U. S. 14.) *German Savings Society* v. *Dormitzer*, 125.

11. *Full faith and credit clause—Dismissal of petition of interpleader where no rights based on judgment of other State are set up.*

Where the Federal question asserted to be contained in the record is manifestly lacking all color of merit the writ of error will be dismissed. On petition of interpleader in a state court by a judgment debtor to engraft upon two judgments for the same debt, one in the State in which the action is brought and the other in a different State, a limitation to a single satisfaction out of a specific sum, there is no merit in the claim to protection under the due faith and credit clause of the Federal Constitution where it does not appear that in the state courts any rights were set up specifically based upon the judgment obtained in the other State, an effect was claimed therefor which if denied to it would have impaired its force or effect, or any right to the relief demanded was predicated upon the effect to be given thereto. *Wabash R. R. Co.* v. *Flannigan*, 29.

12. *Full faith and credit clause—Judgment under concurrent jurisdiction.*

Under the statute passed in 1789 by Virginia, known as the "Virginia Compact," and the act of Congress of February 4, 1791, c. 4, 1 Stat. 189, making Kentucky a State, the State of Indiana has concurrent jurisdiction, including the right to serve process, with Kentucky on the Ohio River opposite its shores below low water mark. An Indiana judgment dependent for its validity upon a summons served on that part of the river is entitled to full faith and credit when sued upon in another State. The effect of the above mentioned acts in giving jurisdiction to Indiana is a Federal question. Where a decision by the state court of the Federal question appears to have been the foundation of the judgment a writ or error lies. *Wedding* v. *Meyler*, 573.

13. *Power of territorial legislature to prescribe rules of practice as to new trials.*

There is no unconstitutional assumption of judicial power, or anything inconsistent with the grant of common law jurisdiction to the courts of the Territory, in the legislature of Arizona enacting that motions for new trials are deemed to have been overruled if not acted upon by the

end of the term at which made, the question to be subject to review by the Supreme Court as if the motion had been overruled by the court and exceptions reserved. *James* v. *Appel*, 129.

14. *Suits arising under Constitution and laws of United States defined.*
Although suits may involve the Constitution or laws of the United States, they are not suits arising thereunder where they do not turn on a controversy between the parties in regard to the operation thereof, on the facts. Nor does a case arise under the Constitution or laws of the United States unless it appears from plaintiff's own statement, in the outset, that some title, right, privilege or immunity on which recovery depends will be defeated by one construction of the Constitution or laws of the United States or sustained by the opposite construction. *Bankers Casualty Co.* v. *Minn., St. Paul &c. Ry.*, 371.

15. *Taking of property within meaning of Fifth Amendment—Flooding of land —Consequential damage.*
Damages to land by flooding as the result of revetments erected by the United States along the banks of the Mississippi River to prevent erosion of the banks from natural causes are consequential and do not constitute a taking of the lands flooded within the meaning of the Fifth Amendment to the Federal Constitution. (*Gibson* v. *United States*, 166 U. S. 269, followed; *United States* v. *Lynah*, 188 U. S. 445, distinguished.) *Bedford* v. *United States*, 217.

16. *Taking of property—Reduction of water rates affecting property of existing corporation.*
Although there is a limitation to the power of amendment when reserved in the constitution or statute of a State it is not confiscation nor a taking of property without due process of law, nor a denial of the equal protection of laws, to fix water rates so as to give an income of six per cent upon the then value of the property actually used, even though the company had prior thereto been allowed to fix rates securing one and a half per cent per month, and if not hampered by an unalterable contract a law reducing the compensation as above is not unconstitutional. *Stanislaus County* v. *San Joaquin C. & I. Co.*, 201.

17. *Unlawful searches and seizures—Self-incriminating evidence.*
There is no violation of the constitutional guaranty of privilege from unlawful searches and seizures in admitting as evidence in a criminal trial, papers found in the execution of a valid search warrant prior to the indictment; and by the introduction of such evidence defendant is not compelled to incriminate himself. *Adams* v. *New York*, 585.

18. *Words "duties, imposts and excises" used comprehensively—Stamp duty on stock transfers within category.*
The words duties, imposts and excises were used comprehensively in the Constitution to cover customs and excise duties imposed on importation, consumption, manufacture and sale of certain commodities, privileges, particular business transactions, vocations and the like. The stamp duty on sales of shares of stock in corporations imposed by the

War Revenue Act of 1898, 30 Stat. 448, falls within that category and was not a direct tax. *Thomas* v. *United States*, 363.

See CONGRESS, POWERS OF; JURISDICTION, A 2, 8; INTERSTATE COMMERCE; TAXATION, 1.

CONSTRUCTION.

OF ORDINANCES.
See STATUTES, A 6.

OF STATUTES.
See STATUTES, A.

OF WILLS.
See WILLS.

CONTRACTS.

1. *Contract of sale to holder of defaulted mortgage—Rescission by former mortgagor guilty of laches.*

Where the holder of a defaulted mortgage on a cattle range and cattle accepts the property in payment of the debt in pursuance of a written contract and enters into possession, treating the property as his own for all purposes, the former owner cannot, in the absence of fraud or mistake, after three and a half years obtain a rescission of the contract and treat the vendee as merely a mortgagee in possession. The doctrine of la hes applies. *Ward* v. *Sherman*, 168.

2. *Contract of sale—Repudiation by vendee not effected by action to recover value of property not delivered by vendor.*

The fact that the vendor failed to deliver part of the property and the vendee commenced an action for the value thereof, alleging such value as the unpaid balance of the original debt, does not amount to a repudiation on his part of the contract of sale, the affidavit accompanying the complaint stating that the debt sued for was not secured by mortgage or otherwise. *Ib.*

3. *Breach—Liability for non-acceptance of adulterated foods, the sale of which is prohibited by law.*

A purchaser cannot be compelled to accept or to pay damages for non-acceptance of an article of food so adulterated as to come within the provisions of a state statute prohibiting the sale thereof because notwithstanding the adulteration it is equal in grade to a standard specified in the contract. *Crossman* v. *Lurman*, 189.

4. *Lex loci contractus.*

A contract made in New York, for the sale of goods to be delivered and stored in New York on arrival from a foreign port, is a New York contract governed by the laws of New York even though the buyers be residents of another State. *Ib.*

5. *Rescission on ground of fraud—Essential act of party defrauded.*

Where a party desires to rescind on the ground of misrepresentation or

fraud, he must upon the discovery of the fraud announce his purpose and adhere to it. If he continues to treat the property as his own the right of rescission is gone and he will be held bound by the contract. *Shappirio* v. *Goldberg*, 232.

See CARRIERS, 1; CORPORATIONS, 1; CONSTITUTIONAL LAW, 4; GOVERNMENTAL POWER; JURISDICTION, A 8.

CORPORATIONS.

1. *Contracts with State—Power of State to alter.*

A corporation although organized under a general statute may nevertheless thereby enter into and obtain a contract from the State which may be of such a nature that it can only be altered in case the power to alter was, prior thereto, provided for in the constitution or legislation of the State. *Stanislaus County* v. *San Joaquin C. & I. Co.*, 201.

2. *Shareholders—Additional liability dependent upon terms of creating statute —Transfer of stock affecting liability.*

The additional liability of the shareholders of corporations depends on the terms of the statute creating it, and as such a statute is in derogation of the common law it cannot be extended beyond the words used. Where the charter of a state bank provides for additional liability of the shareholders as sureties to the creditors of the bank for all contracts and debts to the extent of their stock therein, at the par value thereof, at the time the debt was created, a shareholder is not liable for a debt created after he has actually parted with his stock and the transfer has been regularly entered on the books of the bank. *Brunswick Terminal Co.* v. *National Bank of Baltimore*, 386.

See NATIONAL BANKS.

COURTS.

Federal courts not bound by prior determination of state courts on question regarded by latter as open to review.

Where the decisions of the highest court of a State show that it regarded the construction and application of a statute as open for review if another case arose, its prior determinations of the questions do not necessarily have to be adopted and applied by the Federal courts in cases where the cause of action arose prior to any of the adjudications by the state court. *Brunswick Terminal Co.* v. *National Bank of Baltimore*, 386.

See APPEAL AND WRIT OF ERROR; JURISDICTION; CONSTITUTIONAL LAW, 10, 12; STATUTES, A 2, 6.

COURT AND JURY.

See TAXATION, 3.

CRIMINAL LAW.

See CONSTITUTIONAL LAW, 6, 17; JURISDICTION, A 4.

CROSS BILL.

See PRACTICE, 1.

CUSTOMS DUTIES.

See CARRIERS, 2;
FEDERAL QUESTION, 1;
STATUTES, A 10.

DAMAGES.

See CARRIERS, 1, 3;
CONSTITUTIONAL LAW, 15;
CONTRACTS, 3;
PUBLIC LANDS, 1.

DISTRIBUTION.

See ESTATES OF DECEDENTS, 2;
WILLS.

DISTRICT OF COLUMBIA.

See CONTRACTS, 5 (*Shappirio* v. *Goldberg*, 232);
ESTATES OF DECEDENTS: EXECUTORS AND ADMINISTRATORS (*McIntire* v. *McIntire*, 116);
JURISDICTION, A 1 (*Shappirio* v. *Goldberg*, 232);
JURISDICTION, A 4 (*Sinclair* v. *District of Columbia*, 16);
JURISDICTION, A 6 (*United States ex rel. Steinmetz* v. *Allen*, 543);
PRACTICE, 3 (*Shappirio* v. *Goldberg*, 232).

DIVORCE.

See CONSTITUTIONAL LAW, 10;
JURISDICTION, D 2.

DOMICIL.

See JURISDICTION, D 2.

DUE PROCESS OF LAW.

See CONSTITUTIONAL LAW.

DURESS.

See TAXATION, 5.

EQUAL PROTECTION OF LAWS.

See CONSTITUTIONAL LAW.

EQUITY.

Mistake of counsel affecting rights.

Where an action is not brought in proper form but the plaintiff's intention is manifest, equity will not destroy rights on account of a mere technical mistake of counsel. *Ward* v. *Sherman*, 168.

ESTATES OF DECEDENTS.

1. *Charges for legal services in defending will—Liability of estate.*

Counsel retained to uphold a will at the petition of legatees, including the

administrator with the will annexed, was paid by order of court, the payments being charged against the interest of such legatees without prejudice to an application to have them charged against the estate. In the final account the payments were charged against the estate and the accounts were allowed. *Held* that the charge was proper. *McIntire* v. *McIntire*, 116.

2. *Partial distributions—Against what chargeable.*

Partial distributions are charged against special pecuniary legacies, not against the interest of the legatees in the residue. *Ib.*

3. *Administrator's liability for interest.*

Interest properly is charged against an administrator for money which the record shows to be due from him to the estate. *Ib.*

See EXECUTORS AND ADMINISTRATORS; WILLS.

ESTOPPEL.

Former decree upon merits a bar to subsequent action as to all media concludendi.

A decree rendered upon a bill in equity brought under the Act of March 2, 1889, 25 Stat. 850, to have patents for land declared void as forfeited and to establish the title of the United States to the land, is a bar to a subsequent bill brought against the same defendants to recover the same land on the ground that it was excepted from the original grant as an Indian reservation. As a general rule, a party asserting a right by suit is barred by a judgment or decree upon the merits as to all *media concludendi* or grounds for asserting the right, known when the suit was brought. The general rule is, where a bill is dismissed, to dismiss the cross bill also. *United States* v. *California & Ore. Land Co.*, 355.

EVIDENCE.

Competency, and not method by which obtained, considered.

The fact that papers, which are pertinent to the issue, may have been illegally taken from the possession of the party against whom they are offered is not a valid objection to their admissibility. The court considers the competency of the evidence and not the method by which it was obtained. *Adams* v. *New York*, 585.

See CONSTITUTIONAL LAW, 17.

EXECUTIVE POWERS.

See CONSTITUTIONAL LAW, 8.

EXECUTORS AND ADMINISTRATORS.

1. *Commissions—Waiver of right to.*

An order of court was made by consent that the administrator with the will annexed should act as such but without commission or other charges, the assets being in other hands. When the debts were paid the assets

were transferred to him by another order on his giving a new and larger bond. *Held* that he was entitled to no commissions notwithstanding the change made by the later order. *McIntire* v. *McIntire*, 116.

2. *Interest chargeable against.*

Interest properly is charged against an administrator for money which the record shows to be due from him to the estate. *Ib.*

See ESTATES OF DECEDENTS, 1.

EXPORTS.

See CONSTITUTIONAL LAW, 9.

FEDERAL QUESTION.

1. *Extent of common carrier's protection by laws of United States in paying customs duties on goods in transit.*

Where not only the scope and applicability of the doctrine of subrogation is involved, but also the extent to which a common carrier is protected by the laws of the United States in paying customs duties exacted thereunder on goods in transit over its lines, a Federal question is presented, which, when properly set up in the state courts, is subject to review by this court. *Wabash R. R. Co.* v. *Pearce*, 179.

2. *State levy of merchant's privilege tax—No Federal question involved in determination of who are merchants.*

Where the levy of a merchant's privilege tax violates no Federal right the mere determination of who are merchants within the state law involves no Federal question. The construction of the state law is conclusive and if it embraces all persons doing a like business there is no discrimination. *American Steel & Wire Co.* v. *Speed*, 500.

See CONSTITUTIONAL LAW, 12;
JURISDICTION;
PRACTICE, 2.

FERRIES.

See INTERSTATE COMMERCE, 3.

FRAUD.

See CONTRACTS, 5.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 10, 11, 12.

GIFT.

The motive of a gift does not affect its validity. *South Dakota* v. *North Carolina*, 286.

GOVERNMENTAL POWERS.

Regulation of water rates—Right of State—Alienation of.

To regulate or establish rates for which water will be supplied is, in its

nature, the execution of one of the powers of the State, and the right of the State to do so should not be regarded as parted with any sooner than the right of taxation should be so regarded, and the language of the alleged contract should in both cases be equally plain. *Stanislaus County* v. *San Joaquin C. & I. Co.*, 201.

IMMIGRATION.

See PORTO RICO.

IMPAIRMENT OF CONTRACTS.

See CONSTITUTIONAL LAW, 4.

IMPORTS.

See CARRIERS, 2; CONGRESS, POWERS OF; CONSTITUTIONAL LAW, 1, 8; STATUTES, A 7, 10.

INTEREST.

See EXECUTORS AND ADMINISTRATORS, 2.

INSURANCE.

1. *Rebellion and riot clause in policy—Proof of loss within provisions of policy—Waiver by company.*

Where a policy of insurance excepts loss happening during invasion, rebellion, etc., unless satisfactory proof be made that it was occasioned by independent causes, a notice by the company, without demanding proof, that it will not pay the loss because it was occasioned by one of the excepted causes amounts to a waiver, and relieves the insured from producing such proofs before commencing suit, and how the loss was occasioned is for the jury to determine. *Royal Insurance Co.* v. *Martin*, 149.

2. *Assignment clause—Alienation of chattels effecting avoidance of policy.*

Where a policy for separate specified amounts on a building and goods contained in it provides that it shall cease to be in force as to any property passing from the insured otherwise than by due process of law without notice to, and indorsement by, the company, a transfer of all the goods by the insured to a firm of which he is a silent partner, the active partners having possession and control, is such an alienation as will avoid the policy in respect to the goods, but not as to the building separately insured. *Ib.*

INTERNAL REVENUE.

See JURISDICTION, A 2, C; STATUTES, A 4; TAXATION, 5.

INTERSTATE COMMERCE.

1. *Cab service of railroad wholly within State not interstate commerce—Taxation by State.*

A cab service maintained by the Pennsylvania Railroad Company to take

passengers to and from its terminus in the city of New York, for which the charges are separate from those of other transportation and wholly for service within the State of New York is not interstate commerce, although all persons using the cabs within the company's regulations are either going to or coming from the State of New Jersey by the company's ferry; such cab service is subject to the control of the State of New York and the railroad company is not exempt, on account of being engaged in interstate commerce, from the state privilege tax of carrying on the business of running cabs for hire between points wholly within the State. *Pennsylvania R. R. Co.* v. *Knight*, 21.

2. *Common carrier having stockyard of its own not compelled to accept live stock to be delivered at yard of other road.*

Neither the act of Congress of February 4, 1887, c. 104, 24 Stat. 379, nor section 213 or other provisions in the constitution of the State of Kentucky imposes an obligation upon a railroad having its own stockyards in Louisville under a lease from a stockyard company, to accept live stock from other States for delivery at the stockyards of another railroad in the same city and neighborhood, although there is a physical connection between the two roads. *Central Stock Yards* v. *Louisville &c. Ry. Co.*, 568.

3. *State control over ferries on navigable waters between States—Ferries distinguished.*

Conceding, *arguendo*, that the police power of a State extends to the establishment, regulation or licensing of ferries on navigable streams which are boundaries between it and another State, there are no decisions of this court importing power in a State to directly control interstate commerce or any transportation by water across such a river which does not constitute a ferry in the strict technical sense of that term. There is an essential distinction between a ferry in the restricted and legal signification of the term and the transportation of railroad cars across a boundary river between two States constituting interstate commerce, and such transportation cannot be subjected to conditions imposed by a State which are direct burdens upon interstate commerce. *St. Clair County* v. *Interstate Transfer Co.*, 454.

See TAXATION, 2, 3, 4.

INTOXICATING LIQUORS.

See CONSTITUTIONAL LAW, 5.

JUDGMENTS AND DECREES.

See CONSTITUTIONAL LAW, 10, 11, 12;
ESTOPPEL;
JURISDICTION, A 4.

JURISDICTION.

A. OF THIS COURT.

1. *Amount in controversy in appeals from Court of Appeals, D. C.*

To ascertain its jurisdiction this court looks not to a single feature of the

case but to the entire controversy. Where the prayer for relief is either for conveyance of land with less than $5000 or for a rescission of a contract of sale and repayment of the purchase money of over $5000, the necessary amount is involved to give this court jurisdiction of an appeal from the Court of Appeals of the District of Columbia. *Shappirio* v. *Goldberg*, 232.

2. *Appeals from Circuit Courts of Appeals as of right—Cases involving construction of internal revenue law which also involve constitutional question.*

A case "arising . . . under the revenue laws" section 6, Judiciary Act of 1891, and involving the construction of a law providing for internal revenue, but which, from the outset, from the plaintiff's showing involves the application or construction of the Constitution, or in which is drawn in question the constitutionality of an act of Congress, may be carried by the plaintiff, as of right, the requisite amount being involved, from the Circuit Court of Appeals to this court for final determination. *Spreckels Sugar Refining Co.* v. *McClain*, 397.

3. *Dismissal of writ of error where Federal question basis of judgment below.*

A writ of error will not be dismissed on the ground that the Federal question was not set up in the court below, and that the decision rested on two grounds, one of which was estoppel and independent of the Federal question when the plaintiff in error had insisted upon his constitutional rights as soon as the occasion arose and the opinion deals expressly with such rights. *German Savings Society* v. *Dormitzer*, 125.

4. *District of Columbia—Judgment of Court of Appeals in criminal case not reviewable on writ of error.*

As section 233 of the Code of the District requires the same construction as section 8 of the act of February 9, 1893, this court has no jurisdiction to review, on writ of error, a judgment of the Court of Appeals of the District of Columbia in a criminal case. (*Chapman* v. *United States*, 164 U. S. 436.) *Sinclair* v. *District of Columbia*, 16.

5. *Original—Controversies between States—Action to enforce property rights—Derivation of property rights from individual.*

This court has jurisdiction over an action brought by one State against another to enforce a property right, and where one State owns absolutely bonds of another State, which are specifically secured by shares of stock belonging to the debtor State this court can enter a decree adjudging the amount due and for foreclosure and sale of the security in case of non-payment, leaving the question of judgment over for any deficiency to be determined when it arises. The motive of a gift does not affect its validity, nor is the jurisdiction of this court affected by the fact that the bonds were originally owned by an individual who donated them to the complainant State. *South Dakota* v. *North Carolina*, 286.

6. *Review of judgment of Court of Appeals, D. C., where validity of rule of practice of Patent Office is assailed.*

A rule of practice in the Patent Office when established by the Commissioner

of Patents under section 483, Rev. Stat., constitutes, in part, the powers of the primary examiner and the Commissioner, and becomes to those officers an authority under the United States, and this court has jurisdiction under section 8 of the act of February 9, 1893, to review a final judgment of the Court of Appeals of the District of Columbia where the plaintiff in error assails the validity of such a rule. *Steinmetz* v. *Allen*, 543.

7. *Review of final decision of Supreme Court of Porto Rico.*

This court has jurisdiction to review, on writ of error, a final decision of the Supreme Court of Porto Rico, when the value or sum in dispute exceeds $5000, exclusive of costs. The Circuit Court of Appeals Act of 1891 does not apply to such a case. *Royal Insurance Co.* v. *Martin*, 149.

8. *Scope of review—Contract for which protection under Constitution is sought.*

When a contract is asserted and the Constitution of the United States invoked to protect it, all of the elements which are claimed to constitute it are open to examination and review by this court; and also all that which is claimed to have taken it away, and the writ of error will not be dismissed. *Citizens' Bank* v. *Parker*, 73.

See FEDERAL QUESTION;
PATENT FOR INVENTION, 3.

B. OF CIRCUIT COURTS OF APPEALS.

Finality in action between citizens of different States where recovery not dependent on construction of Constitution, etc.

In an action commenced in the Circuit Court, by a citizen of one State against a railroad company, citizen of another State, for damages for a loss of a registered mail package, where the plaintiff relied on principles of general law applicable to negligence and to the liability of defendant if there was negligence, the fact that the suit involved the relations of the Railroad Company to the government did not put in controversy the construction of any provision of the Constitution or of any law of the United States on which the recovery depended and the judgment of the Circuit Court of Appeals was final and the writ of error is dismissed. *Bankers' Casualty Co.* v. *Minn., St. Paul &c. Ry.*, 371.

See CONSTITUTIONAL LAW, 14.

C. OF CIRCUIT COURTS.

Suits arising under internal revenue act.

Subdivision 4, section 629, Rev. Stat., was not superseded by the Judiciary Act of 1887, 8, and under it a Circuit Court may take cognizance of a suit arising under an act providing for internal revenue without regard to the citizenship of the parties. *Spreckels Sugar Refining Co.* v. *McClain*, 397.

D. OF STATE COURTS.

1. *Concurrent jurisdiction of Indiana and Kentucky over Ohio River.*

Under the statute passed in 1789 by Virginia, known as the "Virginia

Compact," and the act of Congress of February 4, 1791, c. 4, 1 Stat. 189, making Kentucky a State, the State of Indiana has concurrent jurisdiction, including the right to serve process, with Kentucky on the Ohio River opposite its shores below low water mark. *Wedding* v. *Meyler*, 573.

2. *Divorce proceedings—Change of domicil affecting jurisdiction.*

The facts that a resident of a State after selling out his property and business went to another State, bought land and decided to locate there are sufficient for the courts of the latter State to find thereon that he had changed his domicil and that the courts of the State from which he had removed had no jurisdiction of an action subsequently brought by him for divorce. *German Savings Society* v. *Dormitzer*, 125.

See CONSTITUTIONAL LAW, 10.

JURY.

See CONSTITUTIONAL LAW, 7;
INSURANCE, 1.

LACHES.

See CONTRACTS, 1.

LAND PATENTS.

See PUBLIC LANDS, 2.

LEGACIES.

See ESTATES OF DECEDENTS, 2;
WILLS.

LEGISLATIVE POWERS.

See CONGRESS, POWERS OF
CONSTITUTIONAL LAW, 8, 13.

LEX LOCI CONTRACTUS.

See CONTRACTS, 4.

LIEN.

See CARRIERS, 2.

LOCAL LAWS.

Arizona. Practice (see Constitutional Law, 13). *James* v. *Appel*, 129.

California. Use of water (see Statutes, A 12). *Stanislaus County* v. *San Joaquin C. & I. Co.*, 201.

California. Water Act of 1862 (see Constitutional Law, 4). *Stanislaus County* v. *San Joaquin C. & I. Co.*, 201.

Colorado. Regulating sale of liquors (see Constitutional law, 5). *Cronin* v. *Adams*, 108; *Cronin* v. *Denver*, 115.

Georgia. Shareholders of banks. Section 1496 of the Georgia Code of 1882, requiring shareholders of banks to publish notice of transfer in order

to exempt themselves from liability, does not apply to shareholders who have transferred their stock prior to the inception of the debts at the time of the failure of the institution. *Brunswick Terminal Co.* v. *National Bank of Baltimore*, 386.

Kentucky. Constitution, sec. 213, railroads (see Interstate Commerce, 2). *Central Stock Yards* v. *Louisville &c. Ry. Co.*, 568.

New York. Penal Code, secs. 344*a* and 344*b* (see Constitutional Law, 6). *Adams* v. *New York*, 585.

New York. Pure Food Law (see Constitutional Law, 2). *Crossman* v. *Lurman*, 189.

Tennessee. Taxation (see Federal Question, 2). *American Steel & Wire Co.* v. *Speed*, 500.

Virginia. Compact of 1789 (see Constitutional Law, 12). *Wedding* v. *Meyler*, 573.

MANDAMUS.

See PATENT FOR INVENTION, 2.

MEASURE OF DAMAGES.

See PUBLIC LANDS, 1.

MISTAKE.

See EQUITY.

MORTGAGE.

See BONDS;
CONTRACT, 1.

NATIONAL BANKS.

Assessment on stock at call of comptroller—Election of shareholders to wind up affairs of bank.

Section 5205, Rev. Stat., is intended to, and does, confer upon a national banking association the privilege of declining to make the assessment to make good a deficiency to the capital after notice by the Comptroller of the Currency so to do and to elect instead to wind up the bank under section 5220. The shareholders and not the directors have the right to decide which course shall be pursued and an assessment made upon the shares by the directors without action by stockholders is void. *Commercial National Bank* v. *Weinhard*, 243.

NAVIGABLE WATERS.

See INTERSTATE COMMERCE, 3.

NEGLIGENCE.

See CARRIERS, 3.

NEGROES.

See CONSTITUTIONAL LAW, 7.

ORDINANCE.

See STATUTES, A 6.

PARTIES.

See BONDS;
JURISDICTION, C.

PARTNERSHIP.

See INSURANCE, 2.

PASS.

See CARRIERS, 3.

PATENT FOR INVENTION.

1. *Appeals to this court from Court of Appeals, D. C.—Validity of rule of practice in Patent Office.*

A rule of practice in the Patent Office when established by the Commissioner of Patents under section 483, Rev. Stat., constitutes, in part, the powers of the primary examiner and the commissioner, and becomes to those officers an authority under the United States, and this court has jurisdiction under section 8 of the act of February 9, 1893, to review a final judgment of the Court of Appeals of the District of Columbia where the plaintiff in error assails the validity of such a rule. *United States ex rel. Steinmetz* v. *Allen*, 543.

2. *Appeal to board of examiners in chief—Mandamus to compel allowance of.*

Mandamus is the proper remedy where the Commissioner of Patents has refused to require the primary examiner to forward an appeal to the board of examiners in chief to review the ruling of the primary examiner requiring the petitioner to cancel certain of the claims in his application. *United States ex rel. Steinmetz* v. *Allen*, 543.

Mandamus to the Commissioner, and not to the Court of Appeals of the District of Columbia, is the proper remedy to compel the forwarding of an appeal to the board of examiners in chief from the primary examiner. *Ex parte Frasch*, 566.

3. *Infringement—Pioneer patent.*

(*a*) Where it appears from the face of the patents that extrinsic evidence is not needed to explain the terms of art therein, or to apply the descriptions to the subject matter, and the court is able from mere comparison to comprehend what are the inventions described in each patent, and from such comparison whether one device infringes upon the other the question of infringement or no infringement is one of law and susceptible of determination on a writ of error.

(*b*) Where the principal elements of a combination are old, and the devising of means for utilizing them does not involve such an exercise of inventive faculties as entitles the inventor to claim a patent broadly for their combination, the patent therefor is not a primary one and is not entitled to the broad construction given to a pioneer patent.

(c) To prevent a broadening of the scope of an invention beyond its fair import, the words of limitation contained in the claim must be given due effect and the statement in the first claim of the elements entering into the combination must be construed to refer to elements in combination having substantially the form and constructed substantially as described in the specifications and drawings.

(d) Where the patent is not a primary patent and there is no substantial identity in the character of two devices except as the combination produces the same effect, and there are substantially and not merely colorable differences between them, there is no infringement of the earlier patent. *Singer Company* v. *Cramer*, 265.

4. *Joinder of related inventions.*

Section 4886, Rev. Stat., gives a right, which is a substantial one, to join inventions which are related to each other in one patent and this right cannot be denied by a hard and fixed rule which prevents such joinder in all cases. Such a rule is not the exercise of discretion but a determination not to hear. *United States ex rel. Steinmetz* v. *Allen*, 543.

5. *Rule of practice in Patent Office—Invalidity of.*

Rule 41 of Practice in the Patent Office, in so far as it requires a division between claims for a process and claims for an apparatus if they are related and dependent inventions, is invalid. *Ib.*

See JURISDICTION, A 6.

PATENT FOR LAND.

See PUBLIC LANDS, 2.

PAYMENT.

See TAXATION, 5.

PLEADING.

See EQUITY;
PRACTICE, 1.

POLICE POWER.

See CONSTITUTIONAL LAW, 2, 3, 5;
INTERSTATE COMMERCE, 3;
STATUTES, A 7.

PORTO RICO.

Citizens of Porto Rico are not aliens.

The immigration act of March 3, 1891, 26 Stat. 1084, relates to foreigners as respects this country—to persons owing allegiance to a foreign government; citizens of Porto Rico are not "aliens," and upon arrival by water at the ports of our mainland are not "alien immigrants" within the intent and meaning of the act. *Gonzales* v. *Williams*, 1.

See JURISDICTION, A 7.

POWERS OF CONGRESS.

See CONGRESS, POWERS OF.

PRACTICE.

1. *Dismissal of cross bill.*

The general rule is, where a bill is dismissed, to dismiss the cross bill also. *United States* v. *California & Ore. Land Co.*, 355.

2. *Dismissal of writ of error—Federal question lacking color of merit.*

Where the Federal question asserted to be contained in the record is manifestly lacking all color of merit the writ of error will be dismissed. *Wabash R. R. Co.* v. *Flannigan*, 29.

3. *Issues of fact—Findings of lower court relied on.*

When the issues are mainly those of fact, in the absence of clear showing of error, the findings of the two lower courts will be accepted as correct. *Shappirio* v. *Goldberg*, 232.

See APPEAL AND WRIT OF ERROR; CONSTITUTIONAL LAW, 11, 13; JURISDICTION, A 3, 6, 8; PATENT FOR INVENTION, 2, 5; STATUTES, A 8; VERDICT.

PRESUMPTION.

See CONSTITUTIONAL LAW, 6; STATUTES, A 1.

PROCESS.

See APPEAL AND WRIT OF ERROR; JURISDICTION, D 1.

PUBLIC LANDS.

1. *"Adjacent" defined—Territory from which railroad may cut timber for construction—Liability for cutting timber on land not adjacent.*

Without defining the exact distance within which lands must lie in order to be "adjacent" to a railroad passing through territory of the United States, public lands lying in Idaho, more than twenty miles from a two hundred foot right of way of a railroad, not exceeding forty miles in length, are not "adjacent public lands" within the meaning of the act of March 3, 1875, 18 Stat. 482, permitting railroad companies to cut timber therefrom for the construction of their roads. A railroad company cutting timber for the construction of its road on public lands not adjacent thereto is liable to the United States for the value thereof and where there is no intention to violate any law or do a wrongful act, the measure of damages is the value of the timber at the time when, and at the place where, it was cut and not at the place of its delivery. (*Wooden Ware Co.* v. *United States*, 106 U. S. 432, and *Pine River Logging Co.* v. *United States*, 186 U. S. 279, distinguished.) *United States* v. *St. Anthony R. R. Co.*, 524.

2. *Title acquired by adverse possession—Superiority over title under patent.*

An adjudication by commissioners under sec. 4 of the act of March 3, 1807,

amending the act of March 2, 1802, for settlement of claims of land in the Territory of Orleans and Louisiana, for an exact quantity of land already occupied by the claimant by one claiming under a grant of the former sovereign, and which was confirmed by the act of April 29, 1816, so vested the title in the claimant that a patent issued by the Government in 1900 to the heirs of the claimant will not prevail against a title properly acquired meanwhile by adverse possession based upon a tax sale, notwithstanding no survey other than the general survey of 1856 was made after the confirmation. *Joplin* v. *Chachere*, 94.

See ESTOPPEL.

PUBLIC WORKS.

See CONSTITUTIONAL LAW, 15.

RAILROADS.

See BONDS; CARRIERS; INTERSTATE COMMERCE, 1, 2; PUBLIC LANDS, 1; TAXATION, 4.

SEARCHES AND SEIZURES.

See CONSTITUTIONAL LAW, 17.

SET-OFF.

See BANKRUPTCY.

STAMP TAX.

See TAXATION, 5.

STATES.

See BONDS; CONSTITUTIONAL LAW, 1, 2, 3, 5, 6, 12; CORPORATIONS, 1; GOVERNMENTAL POWER; INTERSTATE COMMERCE, 1, 3; JURISDICTION, A 5; LOCAL LAW; STATUTES, A 7; TAXATION, 4.

STATUTES.

A. CONSTRUCTION OF.

1. *Constitutionality presumed.*

Every intendment is in favor of the validity of a statute and it must be presumed to be constitutional unless its repugnancy to the Constitution clearly appears. *Buttfield* v. *Stranahan*, 470.

2. *Strict construction—Exemptions from taxation—Ambiguities to be solved.*

The rule requiring a strict construction of statutes exempting property from taxation should not be infringed, but where ambiguity exists it is the duty of the court to determine whether doubt exists and to solve it and not to immediately surrender to it. *Citizens' Bank* v. *Parker*, 73.

3. *Immigration Act of March* 3, 1891.

The Immigration Act of March 3, 1891, 26 Stat. 1084, relates to foreigners as respects this country—to persons owing allegiance to a foreign government; citizens of Porto Rico are not "aliens," and upon arrival by water at the ports of our mainland are not "alien immigrants" within the intent and meaning of the act. *Gonzales* v. *Williams*, 1.

4. *Internal revenue—War revenue act—Suits arising under revenue laws.*

Subdivision 4, section 629, Rev. Stat., was not superseded by the Judiciary Act of 1887, 8, and under it a Circuit Court may take cognizance of a suit arising under an act providing for internal revenue without regard to the citizenship of the parties. Where the constitutionality of an act of Congress is not drawn in question, a case involving simply the construction of the act is not embraced by the fifth section of the Judiciary Act of 1891. A suit against a collector to recover sums paid under protest as taxes imposed by the War Revenue Act of 1898, 30 Stat. 448, is, within the meaning of the Judiciary Act of 1891, to be deemed one arising under both the Constitution and the laws of the United States, if relief be sought upon the ground that the taxing law is unconstitutional, and if constitutional that its provisions, properly construed, do not authorize the collection of the tax in question. The tax imposed by section 27 of the War Revenue Act of 1898, upon the gross annual receipts, in excess of $250,000 of any corporation or company carrying on or doing the business of refining sugar, is an excise, and not a direct tax to be apportioned among the States according to numbers. In estimating the gross annual receipts of the company for purposes of that tax, receipts derived from the use of wharves used by it in connection with its business should be included, but the receipts by way of interest received on its bank deposits or dividends from stock held by it in other companies should be excluded. *Spreckels Sugar Refining Co.* v. *McClain*, 397.

5. *Liberal construction—Meaning of language not to be unduly stretched.*

Although a liberal construction of a statute may be proper and desirable, yet the fair meaning of the language used must not be unduly stretched for the purpose of reaching any particular case which, while it might appeal to the court, would plainly be beyond the limitations contained in the statute. *United States* v. *St. Anthony R. R. Co.*, 524.

6. *Ordinance—Phraseology not binding on courts.*

Courts are not to be deceived by the mere phraseology in which an ordinance may be couched when it appears conclusively that it was passed for an unlawful purpose and not for the one stated therein. *Postal Telegraph-Cable Co.* v. *Taylor*, 64.

7. *Scope of act of June* 30, 1890, 26 *Stat.* 414, *prohibiting importation of adulterated food.*

The act of Congress of August 30, 1890, 26 Stat. 414, prohibiting importation into the United States of adulterated and unwholesome food is not such an action of Congress on the subject as deprives the States of their

police power to legislate for the prevention of the sale of articles of food so adulterated as to come within valid prohibitions of their statutes. *Crossman* v. *Lurman*, 189.

8. *State statute—Construction of, by state courts accepted.*
A suggested construction of a state statute which would lead to a manifest absurdity and which has not, and is not likely to receive judicial sanction, will not be accepted by this court as the basis of declaring the statute unconstitutional when the courts of the State have given it a construction which is the only one consistent with its purposes and under which it is constitutional. *Adams* v. *New York*, 585.

9. *Statute copied from similar statute of another State.*
A statute copied from a similar statute of another State is generally presumed to be adopted with the construction which it already has received. *James* v. *Appel*, 129.

10. *Tariff Act of* 1897—*Free entry of "casts of sculpture"—Liberal construction.*
Paragraph 649 of the Tariff Act of 1897, providing for the free entry of "casts of sculpture" when specially imported in good faith for the use and by the order of any society incorporated or established solely for religious [or other specified] purposes, should be liberally construed, and any fair doubts as to its true constructions should be resolved by the courts, in favor of the importer. Figures known and correctly described as "casts of sculpture," imported in accordance with this provision of the statute, held to be entitled to free entry thereunder notwithstanding the fact that similar articles were described by certain manufacturers in trade catalogues as statuary or composition statues. *Benziger* v. *United States*, 38.

11. *Title referred to only in case of ambiguity—Government favored in construction relative to privilege claimed from.*
In construing a statute the title is referred to only in cases of doubt and ambiguity; and where doubt exists as to the meaning of a statute in regard to a privilege claimed from the government thereunder it should be resolved in favor of the government. *Cornell* v. *Coyne*, 418.

12. *Validity of California statute relative to use of water.*
Statutes of California providing that the use of all water appropriated for sale, rental or distribution should be a public use and subject to public regulation and control are valid. *Stanislaus County* v. *San Joaquin C. & I. Co.*, 201.

See CONSTITUTIONAL LAW, 4, 8; NATIONAL BANKS; CORPORATIONS, 2; PUBLIC LANDS, 1; JURISDICTION, A 7; TAXATION, 1.

B. OF THE UNITED STATES.

See ACTS OF CONGRESS.

C. OF STATES AND TERRITORIES.

See LOCAL LAW.

STOCK.

See JURISDICTION, A 5;
NATIONAL BANKS.

STOCKHOLDERS.

See BONDS; LOCAL LAW (GEORGIA);
CORPORATIONS, 2; NATIONAL BANKS.

SURVEYS.

See PUBLIC LANDS, 2.

TARIFF ACT.

See STATUTES, A 10.

TAXATION.

1. *Exemption by charter, inclusive of license tax.*

Where it is *res judicata* that the original charter of a bank by which its capital is exempt from any tax constituted a contract within the impairment clause of the Constitution, and that such exemption is not affected by subsequent charters and constitutions, and there is no doubt that the State intended to offer inducements to enlist capital in the early development of the State, and no license tax was demanded for fifty-eight years although that method of taxation was in force during the whole period, the exemption from any tax may be construed as including a license tax on occupation as well as taxes on property. *Citizens' Bank* v. *Parker*, 73.

2. *Of corporation engaged in interstate commerce—License fee manifestly for raising revenue cannot be imposed.*

A license fee cannot be imposed by ordinance of a municipality for purposes of inspection on telegraph companies doing an interstate business which is so far in excess of the expenses of inspection that it is plain that it was adopted, not to repay such expenses, but as a means for raising revenue. *Postal Telegraph-Cable Co.* v. *Taylor*, 64.

3. *Of corporation engaged in interstate commerce—Unreasonableness of license fee determined by judgment for less than amount claimed.*

In an action against a telegraph company doing an interstate business for license fees taxed by a borough in Pennsylvania under an ordinance fixing the amount of the tax per pole and per mile of wire, the court held that while the question of reasonableness of the tax was one for the court he would submit it to the jury for their aid and as advisory only, directing them to find for the plaintiff if they regarded the amount as reasonable and for the defendant if they regarded it as unreasonable; the jury found a verdict for plaintiff for an amount less than that fixed by the ordinance and the court directed judgment to be entered thereon for the amount so found. *Held* that if the amount of the license fee

fixed by the ordinance was not reasonable the ordinance was void and neither the court nor the jury could fix any other amount. *Held* that a verdict for an amount less than that fixed by the ordinance, and the order of the court to enter judgment thereon for the amount so found, amounted to a finding by the jury and the court that the ordinance was not reasonable and the verdict and judgment should have been for defendant. *Held* that the general rule that the plaintiff alone can complain of a verdict for less than he is entitled to under the evidence does not apply where the only basis of his claim is an ordinance which is necessarily declared to be void by the finding of a verdict for an amount less than that fixed by the ordinance itself. *Ib.*

4. *State taxation of railroad as to service performed wholly within State.*

Although a railroad corporation may be largely engaged in interstate commerce it is amenable to state regulation and taxation as to any of its service which is wholly performed within the State and not as a part of interstate commerce. *Pennsylvania R. R. Co.* v. *Knight*, 21.

5. *Voluntary payment—Recovery precluded.*

Taxes paid voluntarily cannot be recovered back, and payments with knowledge and without c mpulsion are voluntary. The purchase of stamps from a collector of internal revenue without intimating the purpose they are for, and without any protest made, or notice given, at the time, that the purchase and use thereof is under duress, or that the law requiring their use was unconstitutional, is a voluntary payment, and a subsequent application to the commissioner to refund the amount is not equivalent to protest made, or notice given, at the time of the purchase. Refusal of a vendee to accept a deed of conveyance without the stamps required by the War Revenue Act of 1898 is not such duress as relieves the vendor from making protest and giving notice at the time of the purchase to the collector from whom the stamps are purchased. *Chesebrough* v. *United States*, 253.

See CONSTITUTIONAL LAW, 1, 9, 18; INTERSTATE COMMERCE, 1; FEDERAL QUESTION, 2; STATUTES, A 2, 4.

TELEGRAPH LINES.

See TAXATION, 2, 3.

TERRITORIES.

See CONSTITUTIONAL LAW, 13.

TITLE.

See PUBLIC LANDS, 2; STATUTES, A 11.

TRIAL.

See CONSTITUTIONAL LAW, 7; INSURANCE, 1; TAXATION, 3. VERDICT.

VERDICT.

Objection to verdict for less than amount claimed.

The general rule that the plaintiff alone can complain of a verdict for less than he is entitled to under the evidence does not apply where the only basis of his claim is an ordinance which is necessarily declared to be void by the finding of a verdict for an amount less than that fixed by the ordinance itself. *Postal Telegraph-Cable Co.* v. *New Hope*, 55.

See TAXATION, 3.

WAR REVENUE ACT.

See CONSTITUTIONAL LAW, 18;
STATUTES, A 4;
TAXATION, 5.

WATER.

See CONSTITUTIONAL LAW, 4, 16;
GOVERNMENTAL POWER;
STATUTES, A 12.

WILLS.

Construction—Distribution per capita and not per stirpes.

Where a testator left a residue "to be equally divided between my brothers Edwin and Charles children," and at the date of the will one brother had deceased leaving six children, five of whom survived the testator, while the other brother had two children, one of whom with himself survived the testator, the residue is to be divided *per capita*. *McIntire* v. *McIntire*, 116.

See ESTATES OF DECEDENTS, 1;
EXECUTORS AND ADMINISTRATORS, 1.

WRIT AND PROCESS.

See APPEAL AND WRIT OF ERROR.
JURISDICTION, D 1.